

1 EMTs. We have a high failure rate in the EMT
2 portion, emergency medical technician portion. And
3 we have invested a lot of money in some of the
4 firefighters. So it's a concern trying to retain
5 them instead of having to terminate them and bring
6 someone else in. And doing that lets them know that
7 if we extend it and give them a chance to pass the
8 test, that would help a whole lot, help the
9 department and the city as far as their investment
10 in the firefighters.

11 And also in talking to the police chief, they
12 was extending their time as far as the schools was
13 more lengthy. And then when the person get on, you
14 know, if they have been in training several months,
15 you didn't have a fair chance to give them the
16 evaluation. So it was two or three different
17 things. And, also, we talked to our building code
18 director, and he also was -- had to have people that
19 he hired and they go to the police academy, so he
20 was going to have the same problem.

21 So, in doing so, the three of us got together
22 and said we would propose and then, that way, we
23 would be able to keep personnel. You know, you get
24 personnel down there. They become accustomed --
25 they become part of the family. And they're

1 firefighters, you know. And you don't want to see
2 them, the ones that have trouble passing the test --
3 we've seen where a lot of them, if you can get them
4 help, they could pass the test. So this was
5 something that we viewed as being real good,
6 something as being a good thing.

7 Q. So you were part of proposing a change to
8 18 months, as well as the police chief?

9 A. That's correct.

10 Q. During that time when you were considering
11 proposing this extension of the probationary period,
12 did you investigate or look into the probation
13 periods of any other cities or counties nearby? Did
14 you do any review like that?

15 A. Well, we knew of other people that had
16 longer. Columbus had 18 months, I believe. And I
17 had a former chief that was working for me at the
18 time also. And we had -- and when it came up with
19 the idea, we talked to other people, and he knew of
20 other people that had longer. And this was
21 something that would give us a chance, like I say,
22 to keep these people on board.

23 Q. Are there any restrictions at any time in
24 your fire department concerning firefighters working
25 secondary jobs or private jobs?

1 A. No, sir. Merit System dictates that they
2 get -- basically, they've got to get permission to
3 do so, but I haven't seen where anybody has been
4 turned down.

5 Q. What about during the period of probation?

6 A. Probationary period that we focus on
7 training. During the probationary period, we have a
8 restriction up until they finish their -- get
9 certified.

10 Q. Okay. So just so I'm clear on that and the
11 record is clear, during the 18-month probationary
12 period in the city's fire department, that new hire
13 during that 18-month period is not permitted to have
14 a secondary job; is that correct?

15 A. They changed that. It was during the 12
16 months of getting your state certification. The key
17 to it is we didn't inflict that on them when we
18 extended to the 18 months as far as having a
19 secondary job. We made sure -- because you were
20 going to have to be state certified within one year
21 or we couldn't keep you aboard anyway.

22 Q. So what's the current restriction on the
23 secondary --

24 A. One year.

25 Q. -- job? Is it just twelve --

1 A. Twelve months --

2 Q. -- months?

3 A. -- that's correct.

4 THE REPORTER: Hold on. Hold on.

5 MR. WOODLEY: Yes. We just have to pause.

6 Q. In your judgment, based upon your
7 experience in the city's fire department, is it more
8 difficult to recruit new hires into the fire
9 department because the probationary period happens
10 to be 18 months?

11 A. I haven't never seen it affect anything.
12 People be so happy to get a job here, they wouldn't
13 care if it was 36 months. We -- I haven't had
14 anybody sit at a table since I have been hiring
15 firefighters, or been on board hiring firefighters,
16 that say that your probationary period is too long.
17 They say, whatever -- they say, thank you, I just
18 want to get in the door. If I can get in the door,
19 it's wonderful.

20 Q. Did it come to your attention that
21 Mr. Davis and other firefighters in the city fire
22 department were opposed to the policy change
23 extending the probationary period to 18 months?

24 A. Not basically until after the fact. They
25 didn't have anything to do with it.

1 Q. So you learned about the opposition after
2 the fact; is that correct?

3 A. Basically, yes, through conversation.

4 Q. Did anyone tell you the reasons why some of
5 the firefighters, including Mr. Davis, opposed the
6 extension of the probationary period?

7 A. No, sir. I learned later that they had, I
8 guess, taken it wrong or whatever. But all they had
9 to do was come to my office and --

10 Q. No, I understand. You keep saying -- and I
11 appreciate that -- that you want them to come to
12 you.

13 A. Well, they could have went to the assistant
14 chiefs, deputy chiefs.

15 Q. But if I may, I just want to focus on this
16 very limited question. Did you eventually become
17 aware of what the reasons were given by Mr. Davis or
18 other firefighters that they were not in favor of
19 extending the period to 18 months?

20 A. I've heard bits and pieces, but I still
21 don't know.

22 Q. So what are they?

23 A. I still don't know the reason.

24 Q. So you don't have any idea why --

25 A. I still don't know the reason.

1 Q. -- they --

2 THE REPORTER: Hold on.

3 Q. So even today, you still don't know?

4 A. I don't know the exact reason of what was
5 behind that whatsoever.

6 Q. Okay. Fair enough. That's my question.

7 THE REPORTER: Please try not to talk over
8 each other.

9 Q. All right. Let's move on to another area,
10 Chief Hunter. At some point in time in April of
11 2006, did it come to your attention that Mr. Davis,
12 as the then-president of the firefighters' labor
13 association, placed a telephone call to Mayor
14 Hardin?

15 A. That's correct.

16 Q. And did it come to your attention that, in
17 fact, Mr. Davis, in his role as the president of
18 firefighters' local union, had, in fact, a telephone
19 conversation in the middle of April of 2006 with the
20 mayor?

21 A. That's correct.

22 Q. And how did that come to your attention?

23 A. I was talking to our Personnel --
24 conversation with our personnel director.

25 Q. Barbara Goodwin?

1 A. That's correct.

2 Q. Let me invite your attention to Exhibit 23,
3 which is on this subject. This is a memo from you,
4 Chief Hunter, to H.H. -- otherwise known as Bubba --
5 Roberts --

6 A. That is correct.

7 Q. -- city manager, dated April 20, 2006, with
8 a copy being sent by you to Barbara Goodwin,
9 personnel director. And the re line is Sergeant
10 Davis, Merit System and SOP violations, end quote.
11 See where it says that?

12 A. That's correct.

13 Q. And at the beginning of this memo, you do
14 indicate what you just told me, that you were
15 informed in a conversation that you had with
16 Personnel Director Goodwin that the city's new
17 probation time for new hires for public safety was
18 evidently the subject of a telephone conversation
19 that Mr. Davis had with the mayor; is that true?

20 A. That's correct.

21 Q. When you learned of that conversation that
22 Mr. Davis had with the mayor from Ms. Goodwin, were
23 you instructed by anyone to look into the matter, to
24 investigate the subject?

25 A. No, sir. I instructed someone to look into

1 the subject.

2 Q. So you did that on your own?

3 A. That's correct.

4 Q. Did Ms. Goodwin suggest or recommend or
5 request that you look into the conversation that
6 Mr. Davis had with the mayor?

7 A. I solely done that on my own.

8 Q. Did you inform City Manager Roberts that
9 you were going to be looking into the telephone
10 conversation that Davis had with Mayor Hardin?

11 A. I informed him what I had heard.

12 Q. From Ms. Goodwin?

13 A. That's correct.

14 Q. What did you tell Manager Roberts about
15 that?

16 A. I told him that I have heard that I have an
17 employee that had directly contacted a council
18 member. And then I had Deputy Chief Waters to talk
19 to him and ask him was this true and to find out
20 what was the reasons, because we had been having
21 open meetings on a lot of different things
22 discussing what we was in the process of doing. And
23 Deputy Chief Waters told me that he had brought this
24 up in meetings that they had had so everybody was
25 informed of what we was in the process of trying to

1 do. So --

2 Q. This conversation --

3 A. -- I was wondering why this came about.

4 Q. The conversation that you just mentioned
5 you had with City Manager Roberts about this
6 subject, did this conversation occur before actually
7 investigating Mr. Davis and disciplining Mr. Davis?
8 I'm trying to get the timing of your conversation
9 with Roberts.

10 A. Did it come before?

11 Q. Yes.

12 A. Yes, it came before, because I had to find
13 out the details first.

14 Q. So you talked to City Manager Roberts
15 before conducting the investigation?

16 A. This is what I done. When I found out
17 about the conversation that particular evening, the
18 next morning I made a phone call to the deputy chief
19 to investigate this. And then I made sure I
20 informed the city manager what I was doing.

21 Q. At that time?

22 A. At that time.

23 Q. Was that by a telephone call to
24 Mr. Roberts?

25 A. It probably was by coming upstairs. My

1 office is right over there. Probably told him face
2 to face.

3 Q. And, at that time, what did Mr. Roberts
4 comment to you about looking into the conversation
5 that Davis had with the mayor?

6 A. Basically is -- like I say, Mr. Roberts
7 give us the opportunity to manage our departments.
8 So it's a matter if that's something you need to
9 look into, then look into it.

10 Q. Is that what he said to you, go ahead and
11 look into it?

12 A. Basically -- I can't remember exact words,
13 but he knew that's what I was doing.

14 Q. Did Mr. Roberts tell you at that time that
15 he felt like that might be a violation of the Merit
16 System rules and regulations?

17 A. No. Mr. Roberts didn't have to tell me
18 that. I felt like that.

19 Q. You felt like that on your own?

20 A. Yes, sir. Yes, sir.

21 Q. So you commissioned Deputy Chief Roy Waters
22 to investigate the matter and to speak with Davis
23 about his telephone conversation with the mayor; is
24 that correct?

25 A. That's correct.

1 Q. And did Deputy Chief Waters then report
2 back to you?

3 A. Yes, sir.

4 Q. Okay. And do you know if Mr. Davis gave a
5 written statement addressed to you concerning his
6 conversation with the mayor?

7 A. That's correct.

8 Q. And if you would look to Exhibit 22, which
9 appears to be a brief written statement from David
10 Davis dated April 19, 2006, addressed to you as the
11 fire chief. And so would that be the written
12 statement coming from Mr. Davis about his telephone
13 conversation with the mayor?

14 A. That's correct.

15 Q. As far as you know, is that statement true
16 and correct? Read it to yourself completely.

17 A. That is correct. That's -- this is the
18 form. This is what he gave me.

19 Q. But my question really is Exhibit 22 --
20 again, Davis's written statement dated April 19,
21 2006 addressed to you -- as far as you know, Chief,
22 is what Mr. Davis said in that written statement
23 true and correct?

24 A. Well, in his words, yes. The only choice I
25 have is --

1 Q. But you don't have any other basis --

2 A. -- take his word.

3 Q. I'm sorry.

4 A. I just have to -- I only can take his word.

5 Q. Do you have any other facts or basis to
6 suggest that what Mr. Davis said in his written
7 statement was untrue?

8 A. I guess what you're asking me as far as
9 reading this, I guess, as a -- what are you asking
10 me?

11 Q. Do you have any information or facts to
12 indicate that the statements contained in Mr. Davis'
13 written statement which we are reviewing now are
14 untrue or incorrect?

15 A. I don't have a reason to believe that they
16 are not true.

17 Q. Okay. Thank you. That's all I was
18 asking.

19 What was your understanding of the nature, if
20 you know, sir, of the telephone conversation between
21 Mr. Davis and the mayor? Do you know if it was on
22 the extension of the probation period? Do you know
23 if it was on other issues that Mr. Davis and Mayor
24 Hardin talked about?

25 A. That's basically what Ms. Goodwin had

1 expressed to me; that he called, I guess, to express
2 his feelings about the probationary period or
3 whatever.

4 Q. For new hires?

5 A. That he didn't agree with it, whatever. I
6 don't know if it was just for new hires or whether
7 he had taken it that it was going to affect him or
8 not.

9 Q. Well, in your memo to Mr. Roberts that we
10 looked at, Exhibit 23, you indicated that
11 Ms. Goodwin had told you there had been a telephone
12 conversation involving Davis and the mayor
13 concerning the new probation time for new hires.
14 You see where it says that?

15 A. Yes.

16 Q. So that was your information as well?

17 A. Yes.

18 Q. Now, later on in that same memo, Exhibit
19 23, from you to Roberts, you criticize Mayor Hardin
20 and you indicate -- you'll see at the bottom of the
21 memo, it says, quote, Mayor Hardin should refer any
22 employee violating the chain of command as indicated
23 in our Merit System back to their department head,
24 personnel department, or city manager. Failing to
25 do so is a violation of our city charter, end

1 quote. You see where you say that?

2 A. That's correct.

3 Q. You're basically accusing the mayor of
4 violating the city charter by talking to a city
5 employee; is that correct?

6 A. In the Merit System, employees are not to
7 have direct contact with -- and the mayor is a
8 council member. And not only that, it's a chain
9 that you go through to even -- to be told whether
10 you can do this or not do it. So the mayor -- yes.
11 That's -- I'm not accusing him of anything. The
12 mayor might have not known this, you know. I'm
13 saying the mayor might have not known this. But in
14 our city charter, it says inquiries about any
15 departments in our city are made solely through the
16 city manager.

17 Q. What, in your mind, was the failure of the
18 mayor when you mention this in the memorandum?

19 A. I guess in my mind, it was that once the
20 subject of the probationary period came up and he
21 recognized and knew it was David Davis, it should
22 have been the end of the conversation.

23 Q. And you understood that that was not the
24 end of the conversation, that the mayor continued
25 discussing it with Davis?

1 A. Well, Davis say in his thing that they
2 discussed the issues, and then discussed it in its
3 entirety to what they wanted to discuss it to.

4 Q. So the mayor's failing or violation of the
5 city charter was, in your judgment, the continuation
6 of the conversation with Davis, correct?

7 A. In here I said feel strongly someone should
8 speak to the mayor about sensitive issue of
9 interfering. The mayor might have not known
10 exactly.

11 Q. Do you know if anyone spoke to Mayor Hardin
12 about the issue?

13 A. That's not my job. I put it in the letter
14 form, memo form.

15 Q. Did you give a copy of this memo to the
16 mayor?

17 A. I gave a copy of it to city manager and
18 personnel director. That's not my job to go to the
19 mayor. I'm not trying to be smart at you. I'm just
20 staying within my parameters. I don't go to the
21 mayor. I stay within my parameters.

22 Q. Do you know if, in the past, any city
23 firefighters have had conversations with the mayor
24 of the city about any issues affecting the fire
25 department?

1 A. No, sir. I don't know.

2 Q. Sir, do you have any information that
3 Mr. Davis's telephone conversation with the mayor in
4 April of 2006 adversely impacted Davis's job
5 performance?

6 A. Yes. He's violated what we asked him to
7 follow as far as the standard operating procedure.

8 Q. Maybe my question really wasn't clear. His
9 actual performance on the job as a firefighter on
10 duty. Did that telephone conversation affect
11 adversely his doing his job in the fire department?

12 A. Yes, it did. He was violating rules.

13 Q. Other than the violation of the rules and
14 regulations, was he less of a firefighter in his
15 following shifts?

16 A. To be a full-rounded firefighter, you need
17 to follow the rules.

18 Q. Can you give me any concrete or specific
19 examples of how that telephone conversation between
20 Davis and the mayor actually disrupted the
21 operations of your fire department?

22 A. Disrupted chain of command. If we got one
23 person that's not following the chain of command, no
24 one else should have to follow it.

25 Q. Other than that point -- and I understand

1 that point --

2 A. That's it. That's the point.

3 Q. -- anything else? Was there any other
4 impairment or disruption, adverse impact on the
5 operations of the fire department as --

6 A. That was --

7 Q. -- let me finish, please -- as a result of
8 the conversation that Mr. Davis had with Mayor
9 Hardin?

10 A. That was the point.

11 Q. Just that other one, the chain of command?

12 A. Just that point.

13 Q. Is there also an SOP that the fire
14 department has that you believe Mr. Davis violated
15 when he talked with the mayor about the probationary
16 period?

17 A. ASOP 12, I believe it is.

18 Q. Why don't you turn to Exhibit 3? And go to
19 Exhibit 3, the fourth page, the last page of
20 Exhibit 3 which, as I understand it, is the ASOP 12
21 that you referred to; is that correct?

22 A. That's correct.

23 Q. And this talks about the subject of
24 addressing the city council; is that correct?

25 A. That's correct.

1 Q. Does that mean addressing the city council
2 as a body in a meeting, addressing the city council?

3 A. Yes. As a person -- this was written in
4 '98 -- I guess as trying to get there, the body,
5 which is a place you would never get to because it
6 stops at the city manager.

7 Q. Okay. So, in other words, under this
8 ASOP 12, firefighters are not permitted to go beyond
9 the city manager and are not permitted to address
10 the city council as a group in a meeting; is that
11 accurate?

12 A. City Manager informs the council of
13 anything that's going on. He would be the one
14 that -- if he had to express something that was bad,
15 he would be the one that would meet with the city
16 council.

17 Q. If a firefighter had a concern about
18 staffing, morale, equipment, budget within the fire
19 department, those kinds of issues, Chief Hunter,
20 that firefighter is not permitted to go directly to
21 the city council in a public meeting and express
22 those concerns?

23 A. That's correct.

24 Q. And if he did so, that would violate the
25 chain of command and would violate this ASOP; is

1 that correct?

2 A. That's right. And it would -- yes, sir.

3 Q. But I guess I'm confused and maybe you can
4 explain it for me. Mr. Davis, of course, made a
5 telephone communication with the mayor while he was
6 off duty. He was not addressing the city council in
7 a meeting or in any other way addressing the city
8 council. So how would Mr. Davis's telephone
9 conversation with the mayor while he was off duty
10 have violated this ASOP which appears to only
11 address the city council?

12 A. For one thing, he broke Merit System. It's
13 a Merit System violation. And for the next thing,
14 if he wanted to try to contact, to go directly --
15 which you'll see here, if any fire department member
16 appears before or try to directly contact -- it says
17 directly contact on number 4 -- a city council
18 member about work-related problems without following
19 these procedures. And it addresses that.

20 Q. And work-related business, you would
21 explain that to include virtually all issues that
22 affect the fire department; is that correct?

23 A. That's correct.

24 Q. Okay. Are you aware that there's a State
25 of Alabama code provision that allows firefighters

1 to belong to an association?

2 A. Yes, sir.

3 Q. We covered that earlier?

4 A. Yes, sir.

5 Q. Okay. And I'm not sure if I asked this,
6 Chief, but I want to make sure it's on the record.
7 You, as the fire chief, you report directly to the
8 city manager?

9 A. That's correct.

10 Q. In the city charter or the city code, are
11 there any provisions, to your knowledge, that
12 address your duties and responsibilities as the fire
13 chief?

14 A. That is correct. I work up under city
15 manager.

16 Q. I know there are provisions that address
17 city manager, and the council and the mayor. But as
18 far as I know, there's no city code provisions or
19 charter provisions that cover you as the fire
20 chief. Is that your understanding?

21 A. I'll have to make sure I look back at that,
22 because I know I -- I would have to look at that.

23 Q. Fair enough. Okay. So let's return to the
24 investigation of Mr. Davis concerning the telephone
25 conversation he had with the mayor. We already

1 covered the subject of Mr. Davis giving his written
2 statement as he was interviewed by Deputy Chief
3 Waters. And we covered in large part the memorandum
4 that you issued to City Manager Roberts dated
5 April 20, 2006. That was Exhibit 23.

6 What next occurred in that process of doing the
7 investigation of Mr. Davis which ultimately led to,
8 of course, his termination?

9 A. What next occurred? We determined that it
10 was a violation. We had to do a write-up, a written
11 write-up. So when that occurred, we took a look at
12 that. That one infraction didn't get Sergeant Davis
13 terminated. It was the multiple infractions and the
14 Group II offenses in Section 14 of the Merit System
15 that didn't allow for him to go over those two
16 different things that led to his termination. It
17 wasn't the one thing; it was the second.

18 That's why I had the meeting with Sergeant
19 Davis in September, to prevent this. He knew he
20 already had one Group II offense. And knowing the
21 Merit System, that was what we was trying to do,
22 make sure that we prevented anybody from going over
23 their infractions that they're allowed. In the
24 group, we have three offenses, three groups of
25 offenses in the Merit System. Part of our job is

1 when we see a person, in trying to keep an employee
2 from getting to that point, we have counseling
3 sessions or whatever it takes to prevent that,
4 because you don't want to terminate anybody. And
5 that's what happened when this particular infraction
6 happened. It pushed it to the second Group II,
7 which is not allowed. That led to his termination.

8 Q. You mentioned that there was an earlier
9 Group II offense involving Mr. Davis. Was that the
10 newspaper article --

11 A. No, sir.

12 Q. -- and the counseling form?

13 A. No, sir.

14 Q. What was the earlier Group II offense?

15 A. It was one -- it should be on that -- it
16 should be listed on his termination form as far
17 as -- it should be on the written. You have to put
18 a list of what a person has in the previous file.

19 MR. WOODLEY: Could we go off the record
20 for a second?

21 MR. GRAHAM: Sure.

22 (Brief recess.)

23 MR. WOODLEY: Back on the record.

24 Q. Again, Chief Hunter, we're talking about
25 Exhibit 24. If you would, turn to that for a

1 moment. And this appears to be the written warning
2 form dated April 20, 2006, involving David Davis; is
3 that correct?

4 A. That's correct.

5 Q. And you'll see there that it -- in the
6 first section when talking about the details of the
7 Merit System violation, it refers to a violation
8 concerning the April 17, 2006 conversation on the
9 telephone that Davis had with the mayor regarding
10 city proposals. You see where it says that?

11 A. That's correct.

12 Q. And I know what it says elsewhere on the
13 form. But that event, that telephone conversation
14 you viewed as violating the chain of command,
15 violating the Merit System rules and regulations for
16 which he was terminated; is that accurate?

17 A. No. He wasn't terminated for that. He was
18 written up for that. He was written up for that
19 action. What got him terminated was the amount of
20 Group II offenses that he had in his file. Which if
21 you go down to August -- if you'll go down to the
22 third paragraph right there on the same page, that
23 one thing got -- warranted a write-up. That one
24 thing didn't get him terminated.

25 Q. Well, let's look at the bottom of the form

1 where it says, quote, discharge as per Merit System
2 rules and regulations for second Group II offense.

3 A. Yes, sir.

4 Q. What was the second Group II offense?

5 A. The one that he had just done.

6 Q. I'm sorry?

7 A. The first one -- you want to know what the
8 first one was?

9 Q. No. I don't want to know what the first
10 one was.

11 A. Okay. Well, the second one --

12 Q. If you would just listen to my question.
13 Let me rephrase it. It's real simple. It says,
14 quote, discharge as per Merit System rules and
15 regulations for second Group II offense, end quote.
16 You see where it says that?

17 A. Yes, sir.

18 Q. Okay. What, specifically, was the second
19 Group II offense?

20 A. Contacting the mayor.

21 Q. Okay. Good enough. And then it says
22 discharged -- and I quote it again -- discharged as
23 per Merit System rules and regulations for first
24 Group III offense, pages 53 and 54, end quote. What
25 specifically was the first Group III offense for

1 which he was discharged?

2 A. Okay. Let me look at it. It was Group
3 III, line 6, insubordination by refusal to perform
4 work assigned slash to comply with written or verbal
5 instructions of the supervisory force.

6 Q. And that related to the telephone
7 conversation you had with the mayor; is that
8 correct?

9 A. And the SOPs. Merit System are written
10 instructions. Basically, I said the Merit System is
11 written instructions and standard operating
12 procedures.

13 Q. I'm afraid the record right now is not
14 clear, at least it's not clear in my mind. So I
15 want to know what the specific first Group III
16 offense was for which he was discharged. Was it the
17 communication over the telephone that he had with
18 Mayor Hardin?

19 A. No. It was his insubordination to follow
20 the rules that was written --

21 Q. Follow what rules?

22 A. -- which was not to --

23 Q. Not to --

24 A. -- the standard operating procedure or the
25 Merit System contact and direct contact with council

1 members.

2 Q. Okay. So it was, in fact, his
3 communication with the mayor that was considered by
4 you and others to be the Group III offense; is that
5 right?

6 A. It was not following the rules.

7 Q. Want me to try again?

8 A. Yes.

9 Q. I will. I'm going to keep trying until I
10 get an adequate answer, which is: The Group III
11 offense which was his first Group III offense for
12 which he was discharged, was that, in fact, his
13 telephone communication with Mayor Hardin?

14 A. That is correct. That was the violation.

15 Q. Okay. Thank you.

16 It goes on to say -- which is confusing to me
17 so you can, I think, explain it -- on the second
18 page of Exhibit 24, this written warning form goes
19 on to say, quote, this written warning is intended
20 to give you an opportunity to correct your work
21 performance and conduct in the future. And then it
22 goes on to say, any further violations could result
23 in your dismissal from employment. You see where it
24 says that?

25 A. That's a standard printout on the form.

1 Doesn't have any bearing on that because it's also
2 conditional --

3 Q. Because he's fired?

4 A. Well, it don't have any bearings on that.
5 That would be in case it is a written warning and it
6 wasn't at this point --

7 Q. Right.

8 A. -- you know.

9 Q. But obviously that warning form, if, in
10 fact, he's being discharged, doesn't have a lot of
11 bearing on Mr. Davis because he's gone.

12 A. Well, I hate that, too.

13 Q. You hate what?

14 A. I hate that he's gone, but that's --

15 Q. Would you be in favor --

16 A. -- part of the rules.

17 Q. -- of possibly reinstating him?

18 A. Would I be in favor of it?

19 Q. Yes.

20 A. No, sir.

21 Q. Why is that?

22 A. It would -- I don't think that would be a
23 good idea.

24 Q. Why?

25 A. And I think he's gone on and done pretty

1 good.

2 Q. We're going to talk about that later on.

3 A. I don't -- I don't think he would want to
4 be here, to tell the truth. And I'm going to be
5 honest with you. I don't think he want to be here.
6 Because he could have communicated with the staff or
7 myself or anyone else while he was here. He had
8 every opportunity. I don't have anything against
9 David.

10 Q. All right. Good enough.

11 A. It's the rules.

12 Q. This warning and discharge form, Exhibit
13 24, was signed apparently by Ms. Goodwin and
14 yourself; is that correct?

15 A. Which one now? 24?

16 Q. Yes.

17 A. Yes.

18 Q. It bears the date April 21, right?

19 A. And Roy Waters, who was the supervisor.
20 That's who carried this out.

21 Q. Now, was this actually handed to Mr. Davis
22 in a meeting that you participated in?

23 A. I wasn't in this one. Chief Waters took
24 care of this, along with Barbara Goodwin. I put
25 this in Chief Waters' hands, Deputy Chief Waters.

1 He signed this on the supervisor's signature. So
2 I'm trying to remember was I there when the final
3 thing happened, but Chief Waters handled this
4 portion.

5 Q. So you were not involved in the meeting
6 that evidently Mr. Davis was called in, Ms. Goodwin
7 was there, Deputy Chief Waters was there, and he was
8 handed this discharge form and actually entered his
9 comments?

10 A. I think -- he handled this, but I might
11 have been there the day -- I'm trying to make sure
12 I'm correct. I usually can remember everything
13 good, but I don't want to say anything that's
14 wrong. I might have been there, but everything was
15 taken care of and the decision was made.

16 Q. Okay. I'm not going to try and read
17 because I can't read Mr. Davis's handwriting, but
18 apparently he entered these written comments at the
19 end of this written warning form, Exhibit 24. Is
20 that your understanding?

21 A. Yes, sir. That's his writing.

22 MR. WOODLEY: Mr. Graham, if you don't
23 mind, I'm going to ask Mr. Davis to read that,
24 because --

25 MR. GRAHAM: That will be fine.

1 MR. WOODLEY: -- it's right at the bottom
2 of Exhibit 24.

3 MR. GRAHAM: No objection.

4 MR. DAVIS: In regards -- what's that say?
5 In regards to contacting the mayor, I was
6 acting in my capacity as president of the
7 Phenix City Firefighters' Association Local
8 3668 and not as a driver/engineer with the City
9 of Phenix City. I will seek a review board
10 hearing.

11 Q. And, Chief Hunter, is that your
12 understanding that those were the written comments
13 that Mr. Davis entered in this warning and discharge
14 form?

15 A. That's correct, and it was put before the
16 review board.

17 Q. And, again, you don't have any information
18 that would indicate that the written statement
19 Mr. Davis had at the bottom of this form was
20 untruthful or incorrect in any way, do you?

21 A. Yes. I feel like -- I don't have any
22 information, but --

23 Q. I don't want your feelings.

24 A. Okay.

25 Q. I just want to know if you have facts --

1 A. I don't have any facts on it.

2 Q. -- that would indicate that statement by
3 him was untrue. You don't have any facts, do you?

4 A. I don't have any facts whether it's true or
5 untrue.

6 Q. Okay. If you could move on to Exhibit 25.
7 And this appears to be an End of Employment form of
8 the City of Phenix City concerning Mr. Davis
9 indicating that his employment ended on April 21,
10 2006. And then you see where the box is checked or
11 the line is checked indicating he was dismissed. Do
12 you see that?

13 A. Yes, sir.

14 Q. And then again -- and I don't want to
15 burden the record, but it refers to the Group II
16 offense and the Group III offense. You see where it
17 indicates that?

18 A. Correct.

19 Q. And those two particular offenses, as you
20 indicated earlier in your testimony, related to his
21 telephone communication with Mayor Hardin; is that
22 correct?

23 A. Phone call was violation of the Merit
24 System and the standard operating procedures.

25 Q. So is the answer to my question yes, that

1 the particular Group II offense, the particular
2 Group III offense that caused his dismissal was that
3 telephone conversation with the mayor?

4 A. That relates to the violation of the SOPs
5 and Merit System.

6 Q. So the answer is yes, and then you added to
7 it?

8 A. That's correct.

9 Q. Okay. I note that the city manager did not
10 sign this End of Employment form for Mr. Davis. Do
11 you know why that was?

12 A. I have -- I have no idea.

13 Q. But you signed it as the department head,
14 correct?

15 A. That's correct.

16 Q. And Ms. Goodwin signed it as well; is that
17 correct?

18 A. That's correct. Yes, sir.

19 Q. Do you know if this was handed to
20 Mr. Davis?

21 A. I'm not for sure.

22 Q. Because you can't remember if you were
23 involved in the meeting at the time, right?

24 A. I'm quite sure I might have been there, but
25 I don't know what paperwork was -- when the

1 finalized paperwork was there.

2 Q. If you move on to Exhibit 25, there's
3 another form. This is called Notice of Termination
4 that apparently was being sent to the Alabama Fire
5 College and Personnel Standards Commission.

6 A. You said 25?

7 Q. It's actually -- I'm sorry. It's 26.

8 A. Okay. 26, yes. Yes, sir.

9 Q. Are you familiar with this form?

10 A. Yes, sir.

11 Q. Is this a normal form that's sent out to
12 the Alabama Fire College when someone leaves the
13 fire department?

14 A. That's correct. You have to notify the
15 Fire College.

16 Q. Is that your signature at the bottom?

17 A. That's correct.

18 Q. And is that the date that you signed it?
19 April 28, 2006?

20 A. That's correct.

21 Q. Now, I'm a little bit confused because it
22 says the date of termination is April 19, 2006,
23 where the other documents say the date of
24 termination was April 21, 2006. Do you know why
25 there's a discrepancy there?

1 A. Training had to get the paperwork together
2 for this to be signed. This come out of our
3 training department, is sent to the Fire College.
4 You have ten days, something like ten days or so.
5 And that's what happened with this. There was the
6 delay in this as far as notification.

7 Q. Well, I'm not talking about the delay. I'm
8 asking you really why there were two different
9 dates. This one says he was terminated on April 19,
10 2006 that you signed. And the other documents
11 indicate that he was terminated and his employment
12 ended on April 21. So there's a two-day difference
13 there, and I was asking you if you could explain why
14 there's a discrepancy on those two dates.

15 A. Okay. Basically, that would be a error.

16 Q. Which one is an error? Was he, in fact,
17 terminated on April 19 or was he terminated on
18 April 21?

19 A. Let me get the date here what he was
20 terminated on. The last -- terminated on the date
21 that Ms. Goodwin has here. The employment date was
22 on the 21st here.

23 MR. GRAHAM: Look at this one. This is --

24 A. Yes. That's the one I'm looking at. April
25 21st. That was a typo oversight.

1 Q. What, in fact, was the termination date; do
2 you know?

3 A. 21st.

4 Q. The 21st of April?

5 A. Yes. Personnel would know better than I
6 know, and Ms. Goodwin is on here, so that's what it
7 was --

8 Q. Did Ms. Goodwin agree that Mr. Davis should
9 be terminated?

10 A. You would have to ask her that, yes. But
11 she wouldn't have signed it if she didn't.

12 Q. Did City Manager Roberts agree that
13 Mr. Davis should be terminated?

14 A. You're going to have to ask Mr. Roberts
15 that.

16 Q. But what's your understanding?

17 A. My understanding is he didn't tell me not
18 to terminate him, so --

19 Q. And then you alluded earlier that Mr. Davis
20 requested a Personnel Review Board hearing
21 concerning his termination; is that correct?

22 A. That's correct.

23 Q. And did you attend that hearing?

24 A. Yes, sir.

25 Q. Did you give testimony at that hearing?

1 A. I believe so.

2 Q. Do you recall what the substance of your
3 testimony was at the Personnel Board hearing?

4 A. No, sir. I can't remember that. I would
5 have to see that. I would have to take a look at
6 it. I don't want to say anything wrong.

7 Q. Now, after the Personnel Board hearing was
8 over and had made its recommendation, did you have
9 any conversations with City Manager Roberts when the
10 matter was placed on his desk, about Mr. Davis?

11 A. Did I have any conversations?

12 Q. Yes. After the hearing is over and before
13 Mr. Roberts makes his determination to uphold the
14 board's decision approving the termination, did you
15 have any conversations during that short period of
16 time with Mr. Roberts?

17 A. No, not unless there was some kind of
18 apology or something. You know, I'm a department
19 head. Whenever something go wrong in the department
20 that leads to this, it's something that you're sorry
21 that you put -- that happens in your department.
22 That's mainly --

23 Q. Look at Exhibit 31, which is another
24 newspaper article. This one is out of the Columbus
25 Ledger-Enquirer which addresses the subject of

1 Mr. Davis's firing. Did you have a chance to look
2 at that newspaper article when it came out?

3 A. I might have. Can I read it?

4 Q. Oh, yes. Sure.

5 A. Yes.

6 Q. Have you finished reading that newspaper
7 article?

8 A. Yes.

9 Q. And, again, this is the article in the
10 Ledger-Enquirer that came out after Mr. Davis's
11 termination. Were you contacted by the newspaper to
12 make a comment on the subject?

13 A. Yes, sir.

14 Q. And did you?

15 A. No, sir.

16 Q. You declined comment?

17 A. Yes, sir.

18 Q. And why did you decline comment to the
19 newspaper?

20 A. It wouldn't -- I feel like it wasn't any of
21 their business. It was a personnel matter.

22 Q. It wasn't any business of the newspaper?

23 A. Not as far as a personnel matter.

24 Q. Now, did it come to your attention after
25 Mr. Davis's firing that he sought employment

1 elsewhere?

2 A. Did it come to my attention?

3 Q. Yes, sir.

4 A. You know, you hear things, but -- I knew he
5 was working for the ambulance service. I seen him
6 working.

7 Q. Were you ever contacted by a prospective
8 employer like the ambulance service concerning
9 Mr. Davis's employment here in the city?

10 A. No. David already was working for them, I
11 think.

12 Q. So you didn't receive any communications by
13 a prospective employer inquiring about what kind of
14 job he did or why he left the city fire department,
15 nothing like that at all?

16 A. People have asked me, yes. I had people
17 ask me about it, but --

18 Q. What people?

19 A. I had someone from Auburn ask me. I had
20 someone from Opelika ask me.

21 Q. What's the spelling on the last word?

22 A. Opelika.

23 Q. Let's talk about Auburn first. Who called
24 you from the Auburn Fire Department about Mr. Davis?

25 A. Basically, they been -- I didn't get a

1 call. I was at a meeting and a couple guys asked
2 me, say -- well, told me, said one of your
3 firefighters put in for a job up here. And I knew
4 right then I couldn't discuss or talk about it,
5 so --

6 Q. Who were those two guys from the Auburn
7 Fire Department?

8 A. I don't know them.

9 Q. Were they chief officers?

10 A. No, sir. I talked to Chief Langley about
11 it. Chief Langley also told me David had put in,
12 but that was the end of it.

13 Q. Is Chief Langley chief of the Auburn Fire
14 Department?

15 A. That's correct.

16 Q. Where were you?

17 A. I was at a consortium meeting. We have a
18 meeting of the different departments in the
19 surrounding area. We all meet together for training
20 purposes, and we meet the first Wednesday of each
21 month and exchange ideas, and we train our personnel
22 together.

23 Q. So Chief Langley from the Auburn Fire
24 Department asked you about David, said he put in for
25 a job and used to work in your department?

1 A. Yes, sir.

2 Q. So what did you say in response to that to
3 Chief Langley?

4 A. I said, that's good.

5 Q. Did you comment on his job performance?

6 A. I know not to comment.

7 Q. Didn't, in fact, Chief Langley ask you
8 why -- what were the circumstances concerning
9 Mr. Davis's departure from your fire department?

10 A. Not that I know of.

11 Q. He didn't ask you anything about that?
12 Just seems to me that would be a curious question
13 that a chief of the department who's got a job
14 application, knowing that he left the Phenix City
15 Fire Department, would want to know why?

16 A. People didn't know me, Chief Langley and
17 certain people. And people who work for this
18 department will tell you it's certain things that
19 when they ask me, I give you a certain look and you
20 know not to ask me anything else.

21 Q. So you didn't say anything good or bad
22 about Davis's job here?

23 A. I know not to do that. I wouldn't do that.

24 Q. Okay. What about the second fire
25 department other than Auburn?

1 A. I was at the Fire Chiefs convention in
2 February. And Chief Morgan told me David had put
3 in. And I said, that's good.

4 Q. Did that chief ask you about his job here
5 in the Phenix City Fire Department?

6 A. He asked me, he said, what kind of
7 firefighter is he? I said, you have to determine
8 that for yourself. I don't -- I don't get into
9 that.

10 Q. So your testimony is you didn't comment one
11 way or the other on this?

12 A. No. I don't do that.

13 Q. Did you have any other communications with
14 any other fire department or ambulance service about
15 Davis?

16 A. No.

17 Q. Those are the only two?

18 A. Those are the only two until one of the
19 guys that worked for me, Rob Schwoebel, he told me
20 that David was working for Opelika. And I said,
21 that's good.

22 Q. Bear with me just for a moment here,
23 Chief.

24 (Brief recess)

25 Q. Okay. We can go back on the record.

1 Chief Hunter, have you ever had occasion to
2 address the city council on fire department issues?

3 A. During budget time each year.

4 Q. Is that the only time?

5 A. That's -- or unless they ask me something.
6 If they asked something in a work session. Or, like
7 recently, we received a Golden Axe from Muscular
8 Dystrophy for raising the highest amount of money in
9 the State of Alabama, you know, things like that.

10 Q. Well done.

11 A. Yes, sir. When we do things like that,
12 that's about it.

13 Q. If you wanted to directly address the city
14 council on an issue concerning your fire department,
15 would you first have to communicate that to the city
16 manager or could you go to the council meeting and
17 say I've got this concern as a chief.

18 A. I would never do that.

19 Q. You have to go through the manager?

20 A. Yes, sir. That's as far as I'm going.

21 Q. Do you know any of the citizens who sit on
22 the Personnel Review Board?

23 A. Do I know any of them?

24 Q. Yes.

25 A. I know them by going to Personnel Review

1 Board hearings, by knowing their faces, seeing them.

2 Q. Outside of the scope of that hearing on
3 Mr. Davis before the board, did you have any
4 conversations with members of the Personnel Review
5 Board about Mr. Davis?

6 A. No, sir.

7 Q. And you are aware, I take it, Chief, that
8 there's a First Amendment to our U.S. Constitution
9 that gives all citizens the rights of free speech
10 and free association?

11 A. That's correct.

12 Q. Okay. In your view, do those rights and
13 principles apply to firefighters in your fire
14 department?

15 A. That's correct. Our Merit System gives us
16 that, too, unless it impedes the performance of our
17 men.

18 Q. Have you ever had a conversation with Mayor
19 Hardin about Davis after Davis was fired?

20 A. Not that I know of.

21 Q. Would that be outside the chain of command
22 if you talked to the mayor about a termination in
23 your department?

24 A. I usually don't talk to him too much.

25 Q. But would it be outside the chain of

1 command?

2 A. Yes, sir. I talk to the city manager.

3 Q. And you can only speak to the city manager
4 about terminations?

5 A. Well, if they are speaking about something
6 in a work session or talking, but I don't -- I don't
7 go to them. I follow -- I stick as close to the
8 rules of etiquette as I can. I couldn't get away
9 with it. I wouldn't do it.

10 MR. WOODLEY: All right. I don't have any
11 further questions. Thank you, Chief.

12 EXAMINATION

13 BY MR. GRAHAM:

14 Q. Let me just ask you one question to clarify
15 something. Now, you do recognize that a firefighter
16 has the right, under the U.S. Constitution, to free
17 speech?

18 A. That's right.

19 Q. And that free speech is allowed if you
20 follow the procedures that are set out in the ASOPs
21 and in the Merit System for the City of Phenix City?

22 A. That's correct.

23 MR. GRAHAM: That's all I have.

24 MR. WOODLEY: I don't have anything
25 further. Thanks, Chief. Appreciate you

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coming.

(The deposition concluded at 12:32 p.m.)

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REPORTER'S CERTIFICATE

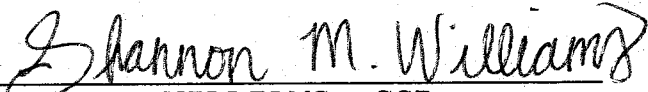
STATE OF ALABAMA

MONTGOMERY COUNTY

I, Shannon Williams, Certified Shorthand Reporter and Commissioner for the State of Alabama at Large, hereby certify that on April 4, 2007, I reported the deposition of WALLACE BURNS HUNTER, SR., who was first duly sworn or affirmed to speak the truth in the matter of the foregoing cause, and that pages 1 through 103 contain a true and accurate transcription of the examination of said witness by counsel for the parties set out herein.

I further certify that I am neither of kin nor of counsel to any of the parties to said cause, nor in any manner interested in the results thereof.

This 10th day of April, 2007.


SHANNON M. WILLIAMS, CSR
Commissioner for the
State of Alabama at Large

MY COMMISSION EXPIRES: 1/14/2010

believe

<p>*</p> <p>* (1:13) (1:23) (3:22) (103:3)</p> <p>A</p> <p>able (6:4) (59:23)</p> <p>aboard (61:21)</p> <p>academy (59:19)</p> <p>according (57:9)</p> <p>accurate (9:24) (10:13) (26:15) (27:14) (27:20) (31:4) (33:14) (33:22) (37:4) (37:17) (48:21) (76:11) (81:16) (104:10)</p> <p>accusing (72:3) (72:11)</p> <p>accustomed (59:24)</p> <p>acting (88:6)</p> <p>action (4:20) (13:11) (81:19)</p> <p>actively (28:6) (28:21)</p> <p>actual (74:9)</p> <p>actually (38:23) (39:7) (48:19) (67:6) (74:20) (86:21) (87:8) (91:7)</p> <p>added (90:6)</p> <p>additional (8:20)</p> <p>address (21:23) (22:12) (34:13) (56:1) (57:15) (76:9) (77:11) (78:12) (78:16) (100:2) (100:13)</p> <p>addressed (15:20) (16:1) (22:18) (23:14) (35:7) (47:3) (69:5) (69:10) (69:21)</p> <p>addresses (37:1) (77:19) (94:25)</p> <p>addressing (75:24) (76:1) (76:2) (77:6) (77:7)</p> <p>adequacy (8:13)</p> <p>adequate (10:5) (10:7) (84:10)</p> <p>adjustments (32:2)</p> <p>adverse (38:25) (75:4)</p> <p>adversely (74:4) (74:11)</p> <p>affect (62:11) (71:7) (74:10) (77:22)</p> <p>affecting (73:24)</p> <p>affiliated (18:7)</p> <p>affirmed (4:3) (104:8)</p> <p>afraid (37:24) (38:1) (83:13)</p> <p>after (21:25) (27:3) (39:5) (40:12) (51:8) (52:3) (56:10) (57:20) (62:24) (63:1) (94:7) (94:12) (95:10) (95:24) (101:19)</p> <p>again (5:23) (7:14) (7:19) (9:15) (10:3) (28:3) (37:13) (41:2) (48:18) (53:5) (69:20) (80:24) (82:22) (84:7) (88:17) (89:14) (95:9)</p> <p>against (86:8)</p> <p>ago (18:4)</p> <p>agree (16:17) (16:24) (25:21) (71:5) (93:8) (93:12)</p> <p>agreed (3:2) (3:16)</p> <p>agreement (1:16)</p> <p>ahead (68:10)</p> <p>alabama (1:2) (1:8) (1:18) (1:20) (2:8) (3:8) (6:5) (23:6) (24:4) (24:13) (77:25) (91:4) (91:12) (100:9) (104:2) (104:5) (104:19)</p> <p>alarm (39:17)</p> <p>all (22:12) (23:8) (24:11) (25:23) (30:13) (30:16) (40:23) (51:22) (52:25) (58:15) (63:8) (64:9) (70:17) (77:21) (86:10) (96:15) (97:19) (101:9) (102:10) (102:23)</p> <p>allegations (5:2)</p> <p>alleged (46:9)</p> <p>all-out (57:8)</p> 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